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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,856	03/23/2001	John Zimmerman	US 010094	5812
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EXAMINER				
BROWN, RUEBEN M				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/815,856

Applicant(s)

ZIMMERMAN, JOHN

Examiner

REUBEN M. BROWN

Art Unit

2424

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/28/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11-18 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,11-18 and 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to the claims have been considered but are not persuasive. On page 7, applicant notes that the Office concedes that "Herz does not discuss any images associated with a celebrity or any other profile...". On page 8, applicant argues that "Kim fails to disclose the claimed feature: learning and reflecting personal knowledge about the user...".

First of all, examiner points out that in Herz, the making and reporting a recommendation to a user, includes the newly recited limitation 'learning and reflecting personal knowledge about the user'. In particular, the agreement matrix in Herz uses a customer profile that includes a questionnaire, (col. 4, lines 41-62; col. 11, lines 59-67 thru col. 12, lines 1-25; col. 13, lines 41-66). Thus, Herz both learns personal knowledge (as least customer's demographics & zip code) and reflects this knowledge in order to generate the agreement matrix and subsequently recommend programming.

Secondly, applicant notes "The Office argued that such a colloquy is well within the scope of Kim. Applicant respectfully disagrees...Kim...discloses that the appearance of the

avatar can be adjusted by software... but nevertheless argues on page 8 that “the best source to determine the scope of Kim is from the specification of Kim...”.

It is pointed out that the claims do not require that the ‘*celebrity profile*’ reports the learned personal knowledge, but instead the ‘*celebrity profile*’ reports the recommendation to the user. The learned personal knowledge is reflected in the list of programming recommended to the user(s).

Examiner also points out that in Kim avatars can express themselves through gestures and body language, as well as interact with environment by playing games, see [0014]. Kim goes on to teach that the organizational avatar can represent the organization on the Internet or in chat rooms by conversation with users, [0023-0027]. Kim discloses that at least one of the benefits of the avatar is that it promotes a positive attitude toward the company and/or products, [0088]. Since the avatar in Kim [0071-0075, 0088] is enabled to communicate with users over a wide range of topics, it clearly would have been within the scope of the avatar to address a user by name and mention something personal about the user during that communication.

Therefore, the combination of references still meet the claimed subject matter.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4-9 & 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz, (U.S. Pat # 5,758,257), in view of Shapira, (U.S. Pat # 7,058,806) and Kim, (U.S. PG-PUB 2003/0156134).

Considering claim 1, the claimed method for making a recommendation in a lifestyle recommendation machine, the machine comprising:

'providing a celebrity profile of a celebrity to a user', is met by the teachings of Herz, col. 49, lines 1-6, which teaches that "each customer could adopt the customer profiles of other individuals or programs such as *'celebrity'* profiles including the viewing preferences of different celebrities".

'making a recommendation to the user for an item, service, and/or event based on the celebrity profile', reads on the operation of the agreement matrix which creates a list of recommended programs for a customer based on the profile for the customer, which in this case, would be the instant celebrity profile adopted by the customer, col. 9, lines 61-67 thru col. 10,

lines 1-20; col. 47, lines 21-50. It is pointed out that the claimed, *'making the recommendation'* corresponds with the creating of the list of recommended programs using the agreement matrix.

The additionally claimed feature of *'learning and reflecting personal knowledge of the user'*, (col. 4, lines 41-62; col. 11, lines 59-67 thru col. 12, lines 1-25; col. 13, lines 41-66) the claimed subject matter is met by the disclosure that Herz uses demographics and zip code information regarding the subscriber to create the customer profile and subsequently generate an agreement matrix between the customer profile and content profile, in order to create a list of recommended programs.

'reporting the recommendation to the user', reads on the disclosure of Herz of **presenting** the most desirable video programs one or more 'virtual channels' customized for the customer", col. 47, lines 35-42. Also, Herz at col. 45, lines 37-50 discloses, "An EPG or display guide 914 listing the available selections **is provided**. In accordance with the invention, the **display guide** is either **modified** to include fields for virtual channels, or else the recommended programming is highlighted in an obvious manner", emphasis added.

As for the additionally amended claimed, *'reporting...affirmatively by the profiled celebrity... the recommendation to the user...through an image of the celebrity while simultaneously displaying the image of the celebrity'*, Herz does not discuss any images associated with a celebrity or any other profile. Nevertheless Shapira is in the same field of endeavor and discloses associating an image with a profile, see Fig. 4. Also Shapira goes on to

teach a system that matches customers with profiles of customers with similar interests, col. 9, lines 1-45. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the teachings of Shapira associating an image with each profile, at least for the desirable benefit of giving the user a visual confirmation of the instant profile. Thus the combination of Herz and Shapira provides for presenting a list of recommended programs to a customer based on a celebrity profile, while displaying an image associated with the instant celebrity.

Regarding the newly added feature, *'to create an appearance during the reporting that the celebrity is making the recommendation to the user'*, Shapira does not discuss reporting the recommendation from such a vantage point. Nevertheless, Kim provides a teaching of an organizational avatar that represents a celebrated entity, i.e., a celebrity. Kim goes on to teach that the organizational avatar interacts with users/customers possibly via the Internet, and that one of the features of the organizational avatar is that it may recommend menu items to customers, Para [0084, 0088, 0095], which corresponds the claimed features of, *'making and reporting a recommendation'*. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify the combination of Herz & Shapira with the feature reporting a recommendation as though it is made by the celebrity, at least for the benefit providing a more personable interaction for the customer, as taught by Kim, Para [0019,0030].

Therefore, the additional limitation of, '*reporting affirmatively...*', is met by disclosure of Kim that the avatar makes a recommendation, Para [0084]. Affirmatively is broad enough to read on the avatar actually making the recommendation.

Considering claim 2, the recommendation is for TV programming in Herz.

Considering claims 4 & 11, as for the '*recommending comprises playing accompanying audio*', Shapira teaches that the recommendation announcement may include a voicemail, col. 4, lines 60-67. Shapira also discloses that audio/visual information may be included in the recommendation, col. 11, lines 1-12. The visual including a video would have been an obvious modification, in order to provide more information about the client-user that can be observed in a still image. Also see Kim, Fig. 4A; 5A; 5E; Para [0063; 0067-0068].

Considering claims 5 & 12, Shapira discloses that each profile may include an associated still image, (Fig. 4; col. 8, lines 63-67 thru col. 9, lines 1-10). Also see Kim, Fig. 4A; 5A; 5E; Para [0063; 0067-0068].

Considering claims 6 & 13, the claimed '*textual message*' reads on any headline or title in Herz or Shapira, which indicates to the customer that they are receiving recommendation information. However, to the extent that Herz does not explicitly show a textual message which announces the recommendation, Official Notice is taken that at the time the invention was made, proving a headline, heading or title was well known in the art. It would have been obvious for

one of ordinary skill in the art at the time the invention was made, to modify Herz using a headline, heading or title, at least for the desirable advantage of more explicitly indicating to the customer that a recommendation is/will be displayed to the screen or is available.

Considering claims 7 & 14, see Shapira col. 11, lines 1-10.

Considering claim 8, the claimed elements of a lifestyle recommendation device that correspond with subject mentioned above in claim 1, are likewise treated. As for the claimed, *'means for obtaining a celebrity profile form a external source ad storing the celebrity profile on the lifestyle recommendation device'*, Herz teaches that the customer may choose celebrity profile, but does not explicitly teach that the celebrity profile is stored at the customer's STT. Nevertheless, Herz teaches that multiple customer profiles may be stored at the customer's STT (col. 25, lines 10-15; col. 45, lines 10-67) and that information need to generate the agreement matrix may be downloaded from the headend. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of downloading the celebrity profile and storing at the customer, at least in order to take advantage of the one-way features of Herz, wherein the agreement matrix is generated at the instant customer's STB, col. 40, lines 22-67 thru col. 41, lines 1-18.

Therefore, the additional limitation of, *'reporting affirmatively...'*, is met by disclosure of Kim that the avatar makes a recommendation, Para [0084]. Affirmatively is broad enough to read

on the avatar actually making the recommendation. The claimed '*profiled celebrity*' reads on using the celebrity chosen from Herz, col. 49, lines 1-5.

Considering claim 9, the claimed element reads on Herz, col. 46, lines 24-60.

Considering claim 15, the claimed program storage device readable by machine tangibly embodying a program of instructions executable by a machine to perform the method steps as discussed in the rejection of claims 1 & 8, reads on disclosure of Herz, col. 40, lines 42-60; col. 46, lines 24-60. Moreover, both Shapira & Kim are computer based inventions, and thus operate using a program storage device, tangibly embodying a program of instructions executable by the machine.

Therefore, the additional limitation of, '*reporting affirmatively...*', is met by disclosure of Kim that the avatar makes a recommendation, Para [0084]. Affirmatively is broad enough to read on the avatar actually making the recommendation. The claimed '*profiled celebrity*' reads on using the celebrity chosen from Herz, col. 49, lines 1-5.

Considering claim 16, the claimed program product embodied in a computer-readable for making a recommendation in a lifestyle machine as discussed in claim 8, reads on the software disclosed in Herz, col. 40, lines 42-60; col. 46, lines 24-60.

4. Claims 17-18 & 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz, in view of Massey, (GB 2 346 527 A, published 9/8/2000).

Considering claim 17, the claimed method for making a recommendation in a lifestyle recommendation machine, the machine comprising:

Herz, col. 49, lines 1-6, teaches that “each customer could adopt the customer profiles of other individuals or programs such as ‘celebrity’ profiles including the viewing preferences of different celebrities”.

However, Herz does not discuss whether a ‘*synthetic celebrity profile*’ may be created. Nevertheless Massey is directed to creating virtual actors, (Page 4, lines 26-27; Page 5, lines 12-20). It would have been obvious for one ordinary skill in the art at the time the invention was made, to modify Herz with the feature of creating a virtual actor, which reads on a ‘*synthetic celebrity profile*’ for the advantage creating a virtual person that can be programmed to do or say whatever desired by its creator(s).

‘*making a recommendation to the user for an item, service, and/or event based on the synthetic celebrity profile or fictitious character*’, reads on the combination Massey & Herz operation of the agreement matrix which creates a list of recommended programs for a customer based on the profile for the customer, which in this case, would be the instant celebrity profile adopted by the customer, col. 9, lines 61-67 thru col. 10, lines 1-20; col. 47, lines 21-50. It is

pointed out that the claimed, *'making the recommendation'* corresponds with the creating of the list of recommended programs using the agreement matrix.

The additionally claimed feature of *'learning and reflecting personal knowledge of the user'*, (col. 4, lines 41-62; col. 11, lines 59-67 thru col. 12, lines 1-25; col. 13, lines 41-66) the claimed subject matter is met by the disclosure that Herz uses demographics and zip code information regarding the subscriber to create the customer profile and subsequently generate an agreement matrix between the customer profile and content profile, in order to create a list of recommended programs.

'affirmatively reporting by the fictitious character the recommendation to the user through the fictitious character to create an appearance that the fictitious character is making a personal recommendation to the user', reads on the disclosure of Herz of **presenting** the most desirable video programs one or more 'virtual channels' customized for the customer", col. 47, lines 35-42 & Massey. Also, Herz at col. 45, lines 37-50 discloses, "An EPG or display guide 914 listing the available selections **is provided**. In accordance with the invention, the **display guide** is either **modified** to include fields for virtual channels, or else the recommended programming is highlighted in an obvious manner", emphasis added.

The virtual actor in Massey and its background and sound can be programmed to present any illusion that is within the known of animation control, that is best suited to get a message to the viewer.

Considering claim 18, Herz teaches that the customer may choose celebrity profile, but does not explicitly teach that the celebrity profile is stored at the customer's STT. Nevertheless, Herz teaches that multiple customer profiles may be stored at the customer's STT (col. 25, lines 10-15; col. 45, lines 10-67) and that information need to generate the agreement matrix may be downloaded from the headend. It would have been an obvious modification of Herz, then, by downloading the celebrity profile and storing at the customer site, at least in order to take advantage of the one-way features of Herz (thereby obviating the requirements of a two-way system), wherein the agreement matrix is generated at the instant customer's STB, col. 40, lines 22-67 thru col. 41, lines 1-18.

Considering claims 23, the claimed '*textual message*' would read on any headline or title in Herz, which indicates to the customer that they are receiving recommendation information. However, to the extent that Herz does not explicitly show a textual message which announces the recommendation, Official Notice is taken that at the time the invention was made, providing a headline, heading or title was well known in the art. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz using a headline, heading or title, at least for the desirable advantage of more explicitly indicating to the customer that a recommendation is/will be displayed on the screen.

5. Claims 21-22 & 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz & Massey, and further in view of Shapira.

Considering claims 21 & 24, Herz does not discuss the feature of accompanying audio with a recommendation. Nevertheless Shapira, which is in the same field of endeavor, teaches that when a profile is matched, the matched or recommended profile may be presented with accompanying audio, col. 11, lines 1-15. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the feature of adding accompanying audio to a recommendation, at least for the benefit of catching the customer's attention.

Considering claims 22 & 25-26, Herz does not discuss any images associated with a celebrity or any other profile. Nevertheless Shapira is in the same field of endeavor and discloses associating an image with a profile, see Fig. 4. Also Shapira goes on to teach a system that matches customers with profiles of customers with similar interests, col. 9, lines 1-45. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Herz with the teachings of Shapira associating an image with each profile, at least for the desirable benefit of giving the user a visual confirmation of the instant profile. Thus the combination of Herz and Shapira provides for presenting a list of recommended programs to a customer based on a celebrity profile, while displaying an image associated with the instant celebrity.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any response to this action should be mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-7290 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REUBEN M. BROWN whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization

where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Christopher Kelley/

Supervisory Patent Examiner, Art Unit 2424